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Note verbale dated 14 July 2003 from the Permanent Mission of Turkmenistan to the United Nations addressed to the Chairman of the Committee

The Permanent Mission of Turkmenistan to the United Nations presents its compliments to the Chairman of the Security Council Committee established pursuant to resolution 1267 (1999) and has the honour to transmit the report of Turkmenistan prepared pursuant to paragraph 6 of Security Council resolution 1390 (2002) of 15 April 2002 (see annex).

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Annex to the note verbale dated 14 July 2003 from the Permanent Mission of Turkmenistan to the United Nations addressed to the Chairman of the Committee

[Original: Russian]

Report of Turkmenistan on the implementation of Security Council resolution 1390 (2002)

The present report was prepared in accordance with paragraph 6 of Security Council resolution 1390 (2002) and is intended for submission to the Committee established pursuant to Security Council resolution 1267 (1999).

In order to implement the provisions of resolution 1390 (2002), Turkmenistan undertook effective and exhaustive measures to coordinate the activities of competent organs on the matters dealt with in it.

Paragraph 2 (a)

In the context of the implementation of Security Council resolutions, relevant measures have been taken to prevent and halt possible cases of financing of terrorist acts. In implementation of the provisions of international instruments, and for the purpose of preventing and halting the financing of terrorism, banks and other financial institutions in Turkmenistan have been informed about individuals and entities linked to terrorist activities and instructed to freeze the assets of these individuals and organizations pursuant to paragraph 2 (a) of resolution 1390 (2002).

In order to implement the measures provided for under paragraph 8 (c) of resolution 1333 (2000), paragraph 4 (b) of resolution 1267 (1999) and paragraph 2 (a) of resolution 1390 (2002), particularly those that fall within the jurisdiction of the Central Bank of Turkmenistan, an audit of its clients' accounts was conducted, which revealed no funds or financial resources controlled by the Taliban, including funds derived from property owned or controlled directly or indirectly by the Taliban or another enterprise controlled by the Taliban; nor were there any funds and other financial assets of Usama bin Laden and individuals and entities established by the Counter-Terrorism Committee to be associated with him, including funds and assets of the al-Qa'idah organization, or derived from property owned or controlled directly or indirectly by bin Laden and his associates.

If any funds and other financial resources of such persons or groups are discovered in the Bank, all measures in accordance with the above-mentioned paragraphs of these resolutions will be taken, such as:

1. Freeze without delay the funds and other financial assets of these individuals, groups, undertakings and entities, including funds derived or generated from property owned or controlled directly or indirectly by them or by persons acting on their behalf or at their direction;

2. Ensure that neither these nor any other funds or financial assets are utilized in the interests of such persons by Turkmen nationals or other persons in the territory of Turkmenistan;

3. Communicate without delay to the bodies that are authorized to report to the Counter-Terrorism Committee any relevant information such as the nature of assets frozen and their account numbers and currency value.

Paragraph 2 (b)

In the light of the present resolution, Turkmenistan has taken additional measures to increase the effectiveness of border controls and control of the issuance of identity and travel documents so as to prevent the movement of terrorist individuals or groups. More careful checks are conducted and stricter records kept at entry points than in the past, and lists of individuals who have been refused visas and denied entry into Turkmenistan are systemically distributed.

Under Turkmenistan's legislation, a national's entry may be denied in the interests of national security or the maintenance of public order; if necessary in order to protect the rights and lawful interests of Turkmen citizens; if during a previous stay in Turkmenistan he was found to have violated the legislation on the legal status of foreign nationals in Turkmenistan or customs and currency regulations, or to have engaged in propaganda activities contrary to Turkmenistan's interests; if on applying for entry he provided false information or failed to provide the necessary documents; and on other grounds under the laws of Turkmenistan. In accordance with article 24 of the Act on the legal status of foreign nationals in Turkmenistan, of 8 October 1993, the Ministry of Foreign Affairs and the Ministry of Internal Affairs can deny a foreign national entry into the country, inter alia on the basis of a representation by the Ministry of National Security of Turkmenistan and, when necessary, with the agreement of other concerned Governments organs:

1. In the interests of national security and the maintenance of public order;

2. If necessary to protect the rights and lawful interests of Turkmenistan citizens and other individuals;

3. If during a previous stay in Turkmenistan he was found to have violated the legislation on the legal status of foreign nationals in Turkmenistan or the customs or currency regulations, or to have engaged in propaganda activities contrary to Turkmenistan's interests;

4. If when applying for entry he provided false information about himself or failed to provide the necessary documents;

4.1 If he has previously committed a criminal offence in the territory of Turkmenistan;

5. On other grounds provided for under the laws of Turkmenistan.

Pursuant to article 25 of the above Act, the Ministry of Foreign Affairs and the Ministry of Internal Affairs can prevent a foreign national's departure from the country, inter alia on the basis of a representation by the Ministry of National Security of Turkmenistan and, when necessary, with the agreement of other concerned Governments organs:

1. If there are grounds for charging him with a crime, until the case is settled;

2. If he is convicted of a crime, until his sentence is served or he is released from serving it;

3. If his departure is contrary to national security interests, until the circumstances that prevented his departure cease to apply;

4. If there are other circumstances under Turkmenistan law that impede his departure.

The departure of a foreign national from Turkmenistan can be delayed until he meets his financial obligations with respect to the vital interests of citizens of Turkmenistan and other individuals and of government agencies and cooperative and social organizations.

Article 28 of the Act specifies the grounds for responsibility for violating the law; in particular, foreign nationals committing crimes, violations of administrative regulations and other offences in the territory of Turkmenistan bear the same responsibility as Turkmen nationals under national legislation. Under article 31 of the Act, a foreign national can be expelled from Turkmenistan:

1. If his activities are counter to national security interests or the maintenance of public order;

2. If this is necessary in order to protect the health and morals or rights and lawful interests of Turkmenistan citizens or other individuals;

3. If he commits serious violations of the legislation on the legal status of foreign nationals in Turkmenistan, or of Turkmenistan's customs, currency and other legislation.

Decisions on expulsion from Turkmenistan are taken by the internal affairs services. Foreign nationals are obliged to leave Turkmenistan in the time frame established by such a decision. Persons failing to leave are liable, with the approval of the Prosecutor's Office, to detention and forced expulsion. Detention is permitted for the time required for expulsion to take place.

In accordance with the regulations on the procedure for granting permission for permanent residence in Turkmenistan, approved by presidential decree on 20 August 2002, a foreign national or stateless person in Turkmenistan can be refused a residence permit:

(a) If he has committed a crime against humanity;

(b) If he has committed a felony or criminal proceedings have been instituted against him;

(c) If his residence in the territory of Turkmenistan is counter to national security interests, can disturb public order or morally harm the population of the State;

(d) If he is infected with HIV, venereal disease or other diseases included in the list established by the Ministry of Health and Medical Industry of Turkmenistan, or suffers from drug addiction;

(e) If he has knowingly provided false information on his residence permit application;

(f) If he has had a past restriction on residence in Turkmenistan, until the term of the restriction expires.

The residence permit is invalidated and annulled if the individual:

(a) Knowingly provided false information on his residence permit application;

(b) Is found guilty by a court of committing a premeditated serious crime;

(c) Raises justified concern that he threatens public order or the national security interests of the State;

(d) Is a member of a terrorist, anti-Government, extremist or other criminal organization;

(e) Has entered the military or other State service of a foreign State, except in cases covered under inter-State agreements to which Turkmenistan is a party;

(f) Is registered in a drug abuse clinic.

To improve State migration management and strengthen oversight of compliance with current legislation on entry, exit and residence in Turkmenistan of foreign nationals and stateless persons, a presidential decree was adopted under which the State Foreign Nationals Registration Service was established to monitor the entry, exit and residence of foreign nationals and stateless persons in Turkmenistan.

To further regulate the entry, exit and residence in Turkmenistan of foreign nationals, ensure registration of the place of residence of foreign nationals and stateless persons and strengthen supervision over their compliance with current Turkmen legislation, a presidential decree was adopted on improving the procedures for entry, exit and residence in Turkmenistan of foreign nationals, and on 6 February 2003 a committee was established to monitor the issuing of permits.

The Ministry of Internal Affairs has also assigned additional staff to the visa and registration section of the Passport and Census Department to strengthen control of the entry, exit and residence in the territory of Turkmenistan of foreign nationals and stateless persons.

In order to prevent crimes related to terrorism, the Ministry of Internal Affairs of Turkmenistan conducts operational and preventive activities within the scope of its competence to identify individuals and their contacts likely to engage in terrorist activities. Turkmenistan strongly condemns international terrorism as a manifestation of terrible evil directed against the entire human race and an attempt to undermine the foundations of modern civilization, and seeks to strengthen cooperation with the international community to combat international terrorism. Cooperation between the government agencies engaged in combating terrorism and the anti-terrorist services of other States is conducted on the basis of bilateral and multilateral agreements, some of them interdepartmental. The conclusion of such agreements is the basis for criminal investigations and legal proceedings, the search for individuals who have committed terrorist crimes and other activities. On 3 January 2003 a protocol was signed on cooperation between the security councils of Turkmenistan and the Russian Federation, in which agreement was reached on possible joint action by the two countries.

The Ministry of Internal Affairs has a special department to combat terrorism and organized crime, one of the tasks of which is to prevent and halt terrorist

activity, and also individual acts of terrorism, and to combat terrorism in the interests of State security.

Article 271 of Turkmenistan's Criminal Code provides for criminal responsibility for terrorism, that is, for the use of explosives, arson and other acts that threaten the lives of people, cause significant damage to property and have other harmful social consequences, if such acts are committed for the purpose of undermining public security, intimidating the population or influencing the decision-making of Government authorities, and for threatening to carry out the above-mentioned acts to the same end. Accordingly, criminal responsibility is incurred for any activities related to the preparation or conduct of terrorist acts.

Turkmenistan's criminal legislation provides that criminal law applies to persons committing crimes in the territory of Turkmenistan (art. 7):

2. Crimes committed within the limits of Turkmenistan's territorial sea and airspace are regarded as having been committed in the territory of Turkmenistan. The Code also applies to crimes committed on Turkmenistan's continental shelf and in its maritime economic zone;

3. A person committing a crime on board a vessel or aircraft registered in a harbour or airport in Turkmenistan that is located in waters or airspace beyond the limits of Turkmenistan, unless otherwise provided by an international agreement to which Turkmenistan is a party;

4. When a crime is committed in the territory of two or more States, a criminal responsibility is incurred under the law of Turkmenistan if the crime was completed or halted in the territory of Turkmenistan;

5. The issue of the criminal liability of diplomatic representatives of foreign States or other persons enjoying immunity, if a crime is committed by such persons in the territory of Turkmenistan, shall be resolved on the basis of the norms of international law and of international agreements to which Turkmenistan is a party.

With regard to individuals who have committed crimes outside the boundaries of Turkmenistan (article 8 of the Criminal Code of Turkmenistan), Turkmen criminal law applies to foreign nationals and stateless persons who are not permanent residents of Turkmenistan in respect of crimes committed outside the territory of Turkmenistan if they are directed against Turkmenistan or its citizens, and also in cases provided for in international agreements to which Turkmenistan is a party, if such persons were not convicted in a foreign State and were brought to justice in the territory of Turkmenistan. Foreign nationals and stateless persons who have committed crimes outside the borders of Turkmenistan and find themselves in the territory of Turkmenistan may in accordance with article 9 of the Criminal Code of Turkmenistan be handed over to a foreign Government to be brought to justice or serve sentences in accordance with international treaties, agreements, conventions and other international legal instruments to which Turkmenistan has acceded.

Sections VIII and IX of the Criminal Code of Turkmenistan establish criminal responsibility for crimes against the peace and security of humanity and also for crimes against the State.

Article 167
War propaganda

War propaganda, that is the dissemination through the mass media and by other means of calls for a war of aggression, shall be punishable by up to two years of corrective labour or up to five years imprisonment.

Article 168
Genocide

Genocide, that is premeditated acts committed with the aim of annihilating in whole or in part, a national, ethnic, racial or religious group — such as the killing of members of such groups, causing them bodily harm, creating living conditions to bring about their complete or partial physical destruction, forcibly reducing procreation or forcibly transferring children from one group to another — as well as the giving of orders to carry out such actions, shall be punishable by a prison term of 15 to 25 years.

Article 169
Mercenarism

1. The recruitment, training, financing or provision of other material assistance to mercenaries, and also the use of mercenaries in armed conflict or other military action, is punishable by a prison term of three to eight years.

2. The participation of mercenaries in armed conflict or military action shall be punishable by imprisonment for 5 to 10 years.

Note

A mercenary is defined as a person acting for material gain who is neither a citizen or permanent resident of a State involved in armed conflict or military action, nor a person sent to perform official duties.

Article 170
Attacks on internationally protected persons

1. An attack on a representative of a foreign Government or a staff member of an international organization enjoying international protection and also on the offices, residences or vehicles of internationally protected persons, shall, if these actions are aimed at provoking war or complicating international relations, be punishable by imprisonment for 5 to 10 years.

2. The same act that leads to the death of a person or other grave consequences shall be punishable by imprisonment for 10 to 25 years.

Article 273
Organization of or participation in an illegal armed group

1. The establishment of an armed group not provided for under the legislation of Turkmenistan, and also the leadership of such a group, shall be punishable by a prison term of three to eight years.

2. Participation in an illegal armed group shall be punishable by a prison term of up to five years.

Note

A person who voluntarily ceases to participate in an illegal armed group and gives up his weapons is exempted from criminal responsibility if he has not committed any other offence.

Article 274
Banditry

1. The establishment and leadership of a stable organized armed group (band) to attack citizens or organizations, and also participation in attacks by such a band, shall be punishable by a prison term of 10 to 20 years, with or without confiscation of property.

2. Participation in an armed group (band) shall be punishable by a prison term of 5 to 15 years, with or without confiscation of property.

Sections XI and XII of the Criminal Code of Turkmenistan establish criminal responsibility for unlawful disruption of economic activities and also for crimes against public security and public health.

Article 271
Terrorism

1. Terrorism, that is the setting off of explosions, arson and the conduct of other actions that threaten the lives of people, cause significant property damage or have other harmful social consequences, if those acts are performed for the purpose of infringing public security, intimidating the population or influencing decision-making by government authorities, and also the threat of carrying out the above-mentioned acts for the same purposes, shall be punishable by a prison term of 5 to 10 years.

2. Such acts shall be punishable by a prison term of 8 to 15 years if they are committed:

(a) Repeatedly;

(b) With the use of firearms;

(c) By groups of persons on the basis of prior agreement.

3. Acts provided for under the first and second parts of this article that bring about the death of a person or are carried out by an organized group or criminal association shall be punishable by a prison term of 10 to 20 years.

Note

A person who has participated in the preparation of a terrorist act is exempted from criminal responsibility if he gives a timely warning to the authorities or helps to prevent the act through other means and if he has not committed any other offence.

Article 272
Knowingly providing false information on acts of terrorism

Knowingly providing false information on the preparation of explosions, arson or other acts that threaten the lives of people, cause significant property damage or bring about other harmful consequences to society shall be punishable by corrective labour for up to two years or a prison term of up to two years.

The Parliament of Turkmenistan, the Mejlis, is now drafting a bill to combat terrorism that defines the concept of terrorism, strengthens the legal basis against it and determines the organization and competence of the relevant ministries in combating terrorism in the interests of State security.

Paragraph 2 (c)

Under the licensing system of the Ministry of Internal Affairs of Turkmenistan, systematic preventive verification is carried out of the possession, use and transport of firearms and explosive, poisonous and radioactive substances.

The licensing system (for the possession, use and transport of weapons) conducted by the internal affairs services of Turkmenistan extends to army-type or specially made rifles (including blank guns), practice, sports or large-calibre rifles (7.62 calibre and higher), small-calibre hunting rifles and smooth-bore firearms, ammunition for such weapons, edged weapons (hunting knives, sabres, daggers, etc.) owned by organizations and citizens, excluding those held by the Ministry of Defence, the Ministry of State Security, the Ministry of Internal Affairs and the State Border Service of Turkmenistan.

Turkmenistan has instituted standard procedures for the acquisition, registration and ownership of hunting weapons. Small-bore and rifled-bore hunting weapons are sold to citizens on the basis of permits from the internal affairs agencies. Members of hunting and fishing associations have the right to own such weapons.

Citizens who acquire small-bore hunting rifles undergo background checks before they receive permits.

Hunting firearms acquired by citizens must be registered with the internal affairs service at the owner's place of residence within 10 days after he has received an owner's permit, which must be renewed every three years. Ammunition and gunpowder are purchased by citizens in specialized stores for the sale of hunting firearms, in accordance with established procedures and only on presentation of their hunting licence and owner's permit from the internal affairs service.

Armed guards accompany the centralized shipment of firearms and ammunition. The transport of rifles and ammunition in hand luggage takes place on the basis of permits from the internal affairs services. Firearms, apart from Army weapons, and live ammunition for them imported and exported by citizens across the State border of Turkmenistan are allowed through by customs on the basis of permits from the Ministry of Internal Affairs.

In accordance with national legislation the law-enforcement agencies in Turkmenistan take routine measures within their jurisdiction to prevent the illegal delivery, sale and transfer of armaments and other military items.

Turkmen legislation has provided for customs restrictions on the import into and export from the territory of Turkmenistan of weapons, ammunition, military hardware and specialized parts and material for its production, explosives, nuclear materials (including materials in the form of fuel-element assemblies); sources of ionizing radiation and technology and special equipment that can be used to make armaments and military hardware.

In the Criminal Code of Turkmenistan, as approved by the federal Act on the approval and implementation of the Code of 12 June 1997, smuggling under the terms of article 254 is:

"1. Smuggling, that is the large-scale transfer across the customs border of Turkmenistan of goods or other items in respect of which special rules have been established regarding their transfer across the customs border of Turkmenistan, with the exception of the goods and items referred to in paragraph 3 of this article, carried out without the knowledge of customs inspectors or concealed from them through the fraudulent use of documents or means of customs identification, or involving the failure to make a declaration or the making of a false declaration, shall be punishable by a fine of 25 to 50 times the average monthly wage or by punitive deduction of earnings for up to two years or by imprisonment for up to three years, with or without confiscation of property.

"2. An act referred to in paragraph 1 of this article committed:

"(a) Repeatedly;

"(b) By a group of persons on the basis of prior agreement or an organized group;

"(c) By an official using his position or by a person exempt from customs inspections;

"(d) With the use of violence against a person conducting customs inspections,

shall be punishable by imprisonment for two to five years, with or without confiscation of property.

"3. The transfer across the customs border of Turkmenistan of narcotic drugs, psychotropic, virulent, toxic, poisonous or radioactive substances, explosives, armaments, explosive devices, firearms or ammunition, nuclear, chemical, biological and other types of weapons of mass destruction, materials and equipment that may be used to make weapons of mass destruction and for which special rules have been established regarding their transfer across the customs border of Turkmenistan, strategically important raw materials, and cultural artefacts for which special rules have been established regarding their transfer across the customs border of Turkmenistan, if such act is committed without the knowledge of customs inspectors or is concealed from them through the fraudulent use of documents or means of customs identification, or involves the failure to make a declaration or the making of a false declaration, shall be punishable by imprisonment for three to eight years, with or without confiscation of property.

"4. An act referred to in paragraph 3 of this article committed:

"(a) Repeatedly;

"(b) By a group of persons on the basis of prior agreement or an organized group;

"(c) By an official using his position or by a person exempt from customs inspections;

"(d) With the use of violence against a person conducting customs inspections,

shall be punishable by imprisonment for 5 to 10 years, with or without confiscation of property."

Note

An act referred to in paragraph 1 of this article is deemed to have been committed on a large scale if the value of the goods transferred is more than 30 times the average monthly wage.

Section XII of the Criminal Code of Turkmenistan establishes criminal responsibility for crimes against public and security and public health.

Article 287
Illegal acquisition, sale, possession, transport, forwarding or bearing of weapons, ammunition, explosives or explosive devices

1. The illegal acquisition, sale, possession, transport, forwarding or bearing of firearms, ammunition, explosives or explosive devices shall be punishable by imprisonment for up to five years.

2. The same acts committed by a group of persons on the basis of prior agreement or repeatedly shall be punishable by imprisonment for two to seven years.

3. Acts referred to in paragraphs 1 and 2 of this article committed by an organized group or a criminal association shall be punishable by imprisonment for 5 to 10 years.

4. The illegal sale or bearing of daggers, Finnish knives or other edged weapons, including throwing weapons, and the illegal sale of gas pistols, gas cylinders or other gas weapons shall be punishable by a fine of 25 to 50 times the average monthly wage or by punitive deduction of earnings for up to two years or by imprisonment for up to two years.

Note

A person who voluntarily surrenders items referred to in this article is exempted from criminal liability if he has not committed any other offence.

Article 288
Illegal manufacture of weapons

1. The illegal manufacture or repair of firearms or spare parts therefore and the illegal manufacture of ammunition, explosives or explosive devices shall be punishable by imprisonment for up to three years.

2. The same acts committed by a group of persons on the basis of prior agreement or repeatedly shall be punishable by imprisonment for two to five years.

3. The illegal manufacture of gas weapons, daggers, Finnish knives or other edged weapons, including throwing weapons, shall be punishable by punitive deduction of earnings for up to two years or by imprisonment for up to three years.

Note

A person who voluntarily surrenders items referred to in this article is exempted from criminal liability if he has not committed any other offence.

Article 290
Improper performance of duties concerning the safeguarding of weapons, ammunition, explosives and explosive devices

Improper performance of duties by persons responsible for safeguarding weapons, ammunition, explosives and explosive devices which leads to theft, destruction or other serious consequences shall be punishable by up to two years of corrective labour or imprisonment.

Article 291
Theft or extortion of weapons, ammunition, explosives or explosive devices

1. The theft or extortion of firearms, spare parts thereof, ammunition, explosives and explosive devices shall be punishable by imprisonment for three to eight years.

2. The same act committed:

(a) Repeatedly;

(b) By a group of persons on the basis of prior agreement;

(c) Through violent means that do not threaten lives and health,

shall be punishable by imprisonment for 5 to 10 years.

3. Acts provided for under the first and second parts of this article shall, if committed with the use of violence endangering life and health by an organized group or a criminal association, be punishable by imprisonment for 8 to 15 years.

More detailed information on the measures taken by Turkmenistan to combat terrorism is set forth in the national report of Turkmenistan submitted pursuant to Security Council resolution 1373 (2001).